

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

TROY E. TILLERSON,

Plaintiff,

vs.

THE MEGA LIFE AND HEALTH
INSURANCE CORPORATION, a
corporation; TRANSAMERICA LIFE
INSURANCE COMPANY F/K/A PFL
LIFE INSURANCE COMPANY, a
corporation; NATIONAL ASSOCIATION
FOR THE SELF EMPLOYED A/K/A
NASE, a corporation,

Defendants.

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CASE NO. 3:05-cv-985-MEF

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON
PLAINTIFF'S STATE LAW CLAIMS, CLAIMS FOR PUNITIVE OR
EXTRACONTRACTUAL DAMAGES, AND JURY DEMAND
BASED ON ERISA PREEMPTION**

COME NOW, Defendants in the above-styled action, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 56, move the Court to enter a judgment as a matter of law in favor of Defendants on Plaintiff's state law claims, claims for punitive or extracontractual damages, and jury demand. In support of this motion, Defendants say as follows:

Plaintiff's allegations focus on his Certificate of Insurance, which is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.* as an employee welfare benefit plan. ERISA preempts state law causes of action. Also, punitive or extracontractual damages are not available in this ERISA action. Furthermore, there is no right to a jury trial on an ERISA claim.

There is no genuine issue as to any material fact; and Defendants are entitled to a judgment in their favor as a matter of law. Defendants are filing a brief and documents attached thereto in support of this motion and expressly adopt and incorporate the facts, arguments and exhibits to the brief as if set forth fully herein.

WHEREFORE, premises considered, Defendants respectfully request this Court enter an Order granting summary judgment in favor of Defendants on Plaintiff's state law claims, claims for punitive or extracontractual damages, and jury demand based on ERISA preemption. Defendants also request such other and further relief to which they are justly entitled.

s/Pamela A. Moore

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Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2007, the foregoing document was electronically filed with the Clerk of this Court using the CM/ECF system, which will send notification of such filing to the following:

Steven W. Couch, Esq.

Hollis & Wright, P.C.

505 North 20th Street, Suite 1500

Birmingham, Alabama 35203

s/Pamela A. Moore

COUNSEL